IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.466 OF 2006

IN

ARBITRATION PETITION (LODG)NO.607 OF 2005

M/s.Anil R. Moray. ...Petitioner

vs.

M/s.Boudh Vikas Co-op. Housing Society Ltd. ...Respondent

Petitioner absent.

CORAM: D.K.DESHMUKH, J.

DATED: 6th NOVEMBER,2006

P.C.:

1. This notice of motion has been taken out by the applicant-petitioner for condonation of delay in filing arbitration petition under section 34 of the Arbitration and Conciliation Act. That petition has been filed on 24.11.2005. By that petition the petitioner challenges the arbitration Award dated 20.1.2005. It appears that the Award was forwarded to the petitioner by the Arbitral Tribunal alongwith

the letter dated 24.1.2005. After receiving the Award it appears that the petitioner made an application on 19.2.2005 under Section 33 of the Act before the Arbitral forum for seeking certain clarification. That application was rejected by order dated 28.2.2005. Sub-section (3) of Section 34 of the Arbitration and Conciliation Act is relevant which reads as under:-

> "34. Application for setting aside arbitral award.:
> (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:
> . Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a

further period of thirty days, but not thereafter."

2. According to the above quoted provisions of Sub-section (3) of Section 34 of the Act, an application under Section 34 of the Act for setting aside the arbitral award can be made in a case where request has been made under section 33 of the Act within a period of three months from the date on which the request under section 33 is disposed of by the Arbitral Tribunal. Therefore, the petition should have been filed by the petitioner within a period of three months from 28.2.2005. Perusal of the proviso of sub-section (3) of Section 34 of the Act shows that Court has been given power by the legislature to condone delay in filing application under section 34 of the Act of maximum period of 30 days. If the delay in filing petition is in excess of 30 days the Court does not have power to condone that delay. The period of three months from 28.2.2005 will come to an end on 28.5.2005. The delay of maximum 30 days thereafter could have been condoned by the Court. Therefore, had the petitioner filed the petition on or before 28.6.2005 the Court could have entertained the application for

condonation of delay, but the petition has been filed on 24.11.2005. Therefore, the delay in filing the petition is more than 30 days after expiry of the period of three months from 28.2.2005. Therefore, it is not within the power of this Court to condone the delay. The notice of motion is therefore, disposed of.